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No. 774

In The

Supreme Court of the United States

OCTOBER TERM, 1958

In the Matter of
INLAND GAS CORPORATION,
Debtor,

In the Matter of
KENTUCKY FUEL GAS
CORPORATION,
Debtor,

In the Matter of
AMERICAN FUEL & POWER
COMPANY, et al.
Debtors,

In Bankruptcy

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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March 14, 1959

NO. 774

PETITION FOR CERTIORARI OF ALLEN COMMITTEE

Errata:

Page 1, last line after the words "on motion", add "appeals from".

Page 14, 3rd line from bottom in second paragraph the word "reject" should read "rejected".

Page 16, 6th line from the bottom the word "from" should read "for".

Page 25, in the heading in the middle of the page the word "Contract" should read "Control".

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RECORD

The record on this petition consists of copies of the Appendices filed with the Clerk as a part of the Writ of Certiorari sought by the Vanston Committee to the same order of the Court of Appeals for the Sixth Circuit sought to be reviewed here.

RECORD REFERENCES

THE DEBTOR CORPORATIONS

American, Inland and Kentucky: American Fuel & Power Company (including minor subsidiaries Inland Gas Distributing Company and Carbreath Gas Company), Inland Gas Corporation and Kentucky Fuel Gas Corporation, respectively, the debtors.

SECURITIES

American Notes: 5 year, 7% Convertible Gold Notes of American secured by pledges of 72.6% of the Common Stock of Inland and Stock of other subsidiaries.

Inland Bonds and Debentures: First Mortgage, 6½% Bonds and Second Mortgage of 7% Debentures of Inland.

Kentucky Bonds and Debentures: First Mortgage, 6½% Bonds and 10 years, 6½% Debentures of Kentucky.

OTHER PARTIES

Allen Committee: These petitioners, representing common stockholders of American other than Columbia.

Columbia: Columbia Gas System, Inc., formerly, before change of name, Columbia Gas & Electric Corporation.

SEC: United States Securities & Exchange Commission, a statutory party.

Trustees: Clinton M. Harbison, Trustee in Bankruptcy of American, and Ben Williamson, Jr., Trustee of Inland and Kentucky, as the context may require.

SHORT REFERENCES TO CASES

1941 Appeals: In re. American Fuel & Power Co., 6 Cir., 122 F. 2d 223.

1945 Appeals: Columbia Gas & Electric Corp. v. *United States*, 6 Cir., 151 F. 2d 461.

1951 Appeals: In re. Inland Gas Corp., 6 Cir., 187 F. 2d 813.

1954 Appeals: In re. Inland Gas Corp., 6 Cir., 211 F. 2d 381.

1957 Appeals: In re. Inland Gas Corp., 6 Cir., 241 F. 2d 374.

1958 Appeals: The Appeals sought to be reviewed here. Opinion is not yet reported but is printed in Appendix, p. 19.

MISCELLANEOUS

Act: The Bankruptcy Act.

Plan: The Plan of Reorganization for the debtors filed below by the Trustees on February 25, 1958 and confirmed by the District Court on May 28, 1958. (Filed as Exhibit R. with Harbeson objection May 13, 1958 order.)

Other original documents will be referred to by title or date of filing.

Emphasis has been supplied in quotations throughout this brief unless otherwise noted.

No._____

In The

Supreme Court of the United States

OCTOBER TERM, 1958.

In the Matter of INLAND GAS CORPORATION, *Debtor*,	In Bankruptcy
In the Matter of KENTUCKY FUEL GAS CORPORATION, *Debtor*,	
In the Matter of AMERICAN FUEL & POWER COMPANY, et al. *Debtors*,	

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Elmo E. Allen and George Greenwald, surviving members of a committee of stockholders of American Fuel & Power Company and Edward D. Spilman, a stockholder of American Fuel & Power Company, pray that a writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled proceedings on January 15, 1959, dismissing on motion a District

Court order confirming[1] a single plan of reorganization of American Fuel and Power Company and its subsidiaries.

OPINION BELOW

The District Court wrote no opinion. The opinion of the Court of Appeals dated January 15, 1959, not yet published, is printed at p. 19 of the Appendix to this Petition.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on January 15, 1959. By order entered February 12, 1959, a stay was granted contingent upon filing this Petition within thirty days from that date. The jurisdiction of this court is invoked under 28 U.S.C. § 1254.

QUESTIONS PRESENTED

I.

Columbia, a huge gas utility, in the course of a conspiracy to restrain and monopolize commerce in natural gas in violation of the Antitrust Laws, purchased bonds, debentures and notes of three debtors interrelated through stockholdings, who were little competitors, for the purpose of acquiring the property and business of the debtors by foreclosure; but foreclosure being impossible, as a part of the same illegal conduct Columbia then acquired the majority of the stock of the debtors and through stock control forced the debtors into receiverships from which this bankruptcy proceeding has developed, in order to acquire

[1] Although many petitions for certiorari have been filed here during the administration of the estates of these debtors, petitions filed now for the first time seek review of a *final* order confirming a plan of reorganization.

the debtors' property and business. A confirmed plan of reorganization of all debtors provides for the payment of all of the creditors except Columbia in cash provided by earnings during bankruptcy and a bank loan, and transfer of the debtors' assets and business to a reorganized company, which will issue all of its stock to Columbia in recognition of Columbia's illegally acquired claims. The questions presented are:

1. Whether the claims of Columbia were properly allowed?

2. Whether the stock interest of innocent minority stockholders of the debtors should be classified as superior to Columbia's claims?

3. Whether the plan of reorganization is fair and equitable?

II.

American and Kentucky having large debts and few assets hold substantially all of the stock of Inland which has substantial assets. All creditors of Inland have been paid, leaving Inland with surplus assets in excess of its liabilities. The plan of reorganization allowed the claims of creditors of American and Kentucky as "quasi creditor" claims against Inland superior to the claims of Inland's stockholders, American and Kentucky. The courts below found that American and Kentucky, as controlling stockholders of Inland, have not overreached their subsidiary and that before bankruptcy the corporate identities of each debtor was maintained. No equities appear justifying disregard of the corporate entities of the debtors. The questions presented are.[2]

1. Whether the courts below properly classified quasi creditor claims of American and Kentucky against Inland as superior to the claims of Inland stockholders?

2. Whether the courts below properly found Inland to be insolvent?

[2]The questions under this heading will not arise unless review of the questions under I is granted, since if the Columbia's status as a creditor of Inland is maintained, no Inland assets will be left for its stockholders.

STATUTES INVOLVED

The statutes involved are Sec. 2, Bankruptcy Act, 66 Stat. 420, 11 U. S. C. Chap. 2, Sec. 11(2); Sec. 57(k), Bankruptcy Act, 52 Stat. 866, 11 U. S. C. Chap. 6, Sec. 93(k); Sec. 221(2), Bankruptcy Act, 52 Stat. 897, 11 U. S. C. 621(2). These are are printed in the Appendix p. 29.

STATEMENT[3]

A single Chapter X plan of reorganization of the debtors, American Fuel & Power Company (and small subsidiaries), Inland Gas Corporation and Kentucky Fuel Gas Corporation, was confirmed below. The jurisdiction of the District Court was invoked because the cases arise under the Bankruptcy Act.

The debtors: American is a holding company controlling Inland and Kentucky through stock ownership. Kentucky and Inland before bankruptcy were operating companies engaged in the production and sale of natural gas in Kentucky, Ohio and West Virginia. Substantially all of the assets of Kentucky were sold to Inland during the course of these proceedings, leaving Kentucky now virtually without property. Inland owns valuable gas producing properties and distribution facilities and has valuable contracts for purchasing gas at wholesale and resale at retail. The assets of all the debtors are valued under the Plan at $10,538,800.

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[3]The facts given in the following statement are taken largely from portion of the opinion of the Court of Appeals in *Columbia Gas & Electric Corporation* v. *United States*, 151 F. 2d 461 (1945) printed in the Appendix, p. 21.

The creditors: In 1928 and 1929 Inland, Kentucky and American sold very large issues of debt securities to the investing public. Inland's issues consisted of Bonds secured by a first mortgage on its properties and Debentures secured by a second mortgage. Kentucky sold bonds secured by a first mortgage and Sinking Fund Debentures. American's issue consisted of Notes secured by a pledge of the stock of its subsidiaries, including its holdings of Inland and Kentucky stock.

The present holders of these debt securities are the principal creditors participating in the Plan. Two broad classes are recognized in these proceedings (a) "public" investors who bought their securities for ordinary reasons of investment or profit; and (b) Columbia which bought large issues of these securities in the open market in the course of a conspiracy in restraint of trade as a step toward the illegal acquisition of the business and assets of the debtors.

Columbia's claims need comment. In 1930 Columbia was the dominant seller of gas in the area served by the debtors and in neighboring states. In that year it purchased on the open market at almost face value very large amounts of Inland and Kentucky Bonds and Debentures which Columbia knew were close to default in order to force foreclosure and to buy the debtor's property at forced sale. Before the expected default occurred, the controlling stockholders of American arranged for new financing by a syndicate to prevent default and to finance expansion which if successful would have enabled the debtors to meet their debt charges and compete vigorously with Columbia. The syndicate required the American stockholders to sur-

render control by issuing to it 76% of the American stock. In order to defeat the threat posed by the new financing, Columbia bought the syndicate's stock and other properties for some $3,000,000 and installed its nominees as officers and directors of American. These officers forced the debtors into equity receiverships which were followed by reorganizations under Section 77B and Chapter X of the Bankruptcy Act. Both courts below have emphatically and repeatedly held that the purchase by Columbia of the debt obligations and stock control of the debtors was made in the course of a conspiracy to monopolize trade and commerce in violation of the Antitrust Laws. Details of the conspiracy and the Court of Appeals' opinion of Columbia's conduct are found in its opinion on the 1945 Appeals, parts of which are copied at page 21 of the Appendix.

All publicly held debt issues of Inland have been paid during bankruptcy. The principal contending creditors are therefore the public holders of American Notes and Kentucky Bonds and Debentures on the one hand, and Columbia on the other.

The Stockholders: The stock of American (which as noted controls the other debtors) is owned 76% by Columbia and 24% by public stockholders represented by the Allen Committee. American owns 72.6% of the Inland stock and about 90% of the Kentucky stock. Kentucky in turn owns about 26% of the Inland stock. The remaining Inland stock, 1.4%, is owned by the investing public. The minority stockholders of American, represented by the Allen Committee, seek rejection of Columbia's claims since upon rejection, 72.6% of Inland's assets after payment of allowed claims would

normally flow to American. This, added to American's assets, would be sufficient to pay American's debts and leave substantial assets for American's stockholders.

The Plan following decisions of the Court of Appeals is based upon the following principles: (See Plan, pp. 3, 4, Exhibit R to American Trustee motion to dismiss appeal from Order Operating Plan dated May 13, 1958).

1. Columbia's claims against each of the debtors are subordinated to the claims of public creditors of each debtor. Columbia's claims against Inland are also subordinated to the claims of the holders of American Notes and Kentucky Bonds and Debentures (See par. 3 below).

2. The assets of each debtor are applied first to the claims of its public creditors.

3. The public holders of American Notes and Kentucky Bonds and Debentures are classified as "quasi creditors" of Inland whose claims to Inland's assets are superior to Columbia's subordinated claims against Inland and to the claims of Inland's stockholders guilty of no wrong. After the payment of Inland's public creditors, the Inland assets are applied to the payment of the American Notes (secured by a pledge of 72.6% of the Inland stock) as secured claims against Inland with interest to date of payment, and to the payment of Kentucky Bonds and Debentures (not secured by a pledge of Inland stock) as unsecured claims against Inland without interest since insolvency.

4. The Inland Trustee will obtain a bank loan under a commitment already made which will supply cash,

which, added to the cash and cash items held by the trustees, will be sufficient to pay off all public creditors of all the debtors allowed under the plan.

5. A reorganized company will acquire the physical assets and contracts of Inland and will issue to Columbia all its common stock of the par value equal to the remaining Inland assets. Under the Plan valuation this is $3,060,000 as of December 31, 1957. The face amount of the Inland Bonds held by Columbia is $1,571,054.40 as of December 31, 1957. The remainder is postbankruptcy interest.

6. No stockholder of Inland will participate *qua* stockholder, although the American and Kentucky creditors are recognized as "quasi creditors" of Inland because of the Inland stock held by American and Kentucky. (The Plan, particularly p. 3).

Six Court of Appeals Decisions Bearing Directly on Allowance of Columbia's Claims.[4] The 1941 Appeals rejected a compromise, approved below, of treble damage suits for Antitrust violations brought by the Inland Trustee against Columbia. Columbia's claims against and stock interest in all the debtors were ordered disallowed.

The 1945 Appeals affirmed findings of Columbia's violation of the Antitrust Laws but departed from the 1941 decision by subordinating Columbia's claims to the claims of public creditors of every class. Inland's assets then were not sufficient to pay its public creditors.

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[4]The style and citations in the cases which follow are found under "References", p. iv.

The 1951 Appeals reviewed a plan of reorganization approved below, which provided for participation of Columbia to the extent of the value of Inland's assets after payment of all publicly held claims against Inland. The Sixth Circuit, refusing to allow Columbia to participate reversed, reasoning that the creditors of American and Kentucky in purchasing debt securities had relied on a pledge of Inland stock and therefore were "quasi creditors" of Inland entitled to recovery from Inland assets after payment of Inland's public creditors in proportion to the American (72.6%) and Kentucky (26%) holdings of Inland stock.[5] Contrary to the position of SEC the public holders of 1.4% of Inland's stock were denied participation.

The 1954 Appeals sustained a plan of reorganization approved below which, eliminating Columbia, provided for participation of American and Kentucky public creditors as quasi creditors of Inland. Inland's assets had increased to the point that 72.6% of its surplus flowing to American would more than discharge American's public creditors. The "overage" was not allocated to American stockholders but to Kentucky creditors, an abandonment of the proportional allocation in the 1951 opinion.

The 1957 Appeals considered a new plan of reorganization made necessary by a large increase in Inland's assets and an offer to buy the debtors' properties for cash. The trustees prepared a plan under which

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[5]This reasoning subsequently broke down completely as applied to Kentucky creditors. In later proceedings it was shown that Kentucky bought the Inland stock after the bonds were sold. The bondholders could not have relied on Inland earnings to discharge the obligations when the bonds were issued. Later evidence also developed that Kentucky bonds were not secured by a pledge of Inland stock and the court so held. (See 141 F. 2d 374.)

American public creditors would be paid principal and interests from the proceeds of sale. The remaining cash was to be paid to Kentucky Bond and Debenture holders. This would have discharged the entire principal and made a large payment on interest. The District Court disapproved the plan and ordered the trustees to prepare a new plan allocating Inland's assets to the payment of (i) American Notes with full interest; (ii) the principal of Kentucky Bonds and Debentures; and (iii) the remainder to Columbia. The Court of Appeals affirmed the District Court's order. The Allen Committee petitioned the Court of Appeals to reconsider the 1945 opinion subordinating rather than rejecting Columbia's claims on the ground of changed circumstances consisting of a large increase in the value of Inland's assets. The Petition was dismissed. SEC unsuccessfully urged disallowance or subordination of Columbia's claims to public stockholders' interest.

The 1958 Appeals challenged the present Plan. The Allen Committee and SEC again urged that rights of innocent public stockholders of Inland and American should take precedence over Columbia's illegally acquired claims. All appeals were dismissed on motion.

REASONS FOR GRANTING THE WRIT

1. Allowance of Columbia's claims probably conflicts directly with the decision of this court in *Pepper* v. *Litton*, 308 U. S. 295. The basic principles of the *Pepper* case seem to be (a) a bankruptcy court is a court of equity and

> "* * *. By reason of the express provisions of § 2 (Bankruptcy Act) these equitable pow-

ers are to be exercised on the allowance of claims, a conclusion which is fortified by § 57(k)[6]" (308 U. S. p. 305);

(b) where a claimant in bankruptcy is the controlling stockholder of the debtor, as Columbia is here, allowance depends upon the utmost good faith in the dealings between the stockholder and the debtor (*id.*, p. 306); (c) where a claimant submits to the bankruptcy court a claim which is valid on its face, that court has power to look behind the claim and, valid or not, to determine whether it is one which equity will enforce (*id.*, p. 303); and (d) unless the claim meets strict standards of fairness and equity, it will be disallowed.

Further, if allowance of Columbia's claims does not conflict directly with the decision in *Pepper* v. *Litton*, it surely conflicts with the principles there announced and the principles settled by *Vanston Bondholders Protective Committee* v. *Green*, 329 U. S. 156. In *Vanston* this court, in the majority opinion, held that allowance of a claim (for interest on interest) even in the complete absence of any misconduct on the part of the claimants will be disallowed under general "equitable principles" (329 U. S., pp. 163, 165, 166) if the rights of other interested parties will be prejudiced. Here clearly equitable principles demand rejection of Columbia's claims. The rights of stockholders guilty of no wrong are wiped out by the Plan. *Cf. Sampsell* v. *Imperial Paper & Color Corporation*, 313 U. S. 215; *Taylor* v. *Standard Gas & Electric Company et al.* 306 U. S. 307.

The litigation below shows that subordination decreed on the 1945 Appeal, reversing the original dis-

[6]This statute copied Appendix, p. 29.

allowance in 1941, was brought about not because there was any equity in Columbia's claims requiring subordination rather than rejection, but because at the time the practical result was disallowance.

In the 1941 Appeals the Sixth Circuit scathingly denounced Columbia's treatment of the debtors, their creditors and their stockholders and concluded:

> "* * *. Under the facts in this record no principle of equity, morals or law requires the court to approve the present claims or stock interests of the Columbia and this court should not lend its aid to further a scheme abhorrent to all recognized rules of right and justice as the facts here show." (122 F. 2d p. 229).

The court ordered rejection of Columbia's claims and stock interests in all the debtors.

Departure from this forthright stand was made on the 1945 Appeals (by another panel) because the court apparently felt that *Hartford-Empire Co. v. United States*, 323 U. S. 386, a patent infringement case, suggested, if not required, subordination. The paragraph discussing *Hartford-Empire* began:

> "In our view, Columbia receives no support from the case of Hartford-Empire Co. v. United States * * *".

but concluded:

> "* * * It may be as suggested by the S.E.C. that, under the facts of the case, the distinction between subordination and rejection is purely academic, but submissiveness in principle to the doctrine of the Hartford-Empire case, perhaps requires an amendment to the decree, limiting

> the remedy of the petitioners to the subordination of the Columbia claims." (151 F. 2d, p. 470). (See parts of the opinion at Appendix, p. 21, Hartford-Empire discussion, p. 28).

On the 1951 Appeal, at a time when Inland's assets had increased, Chief Judge Simons wrote further on *Hartford-Empire:*

> "* * *. Mature consideration leads to the conclusion that the analogy between Columbia securities here and the patents involved in the Hartford-Empire case, supra, is not as close as it then appeared to us to be." but " * * * This is not to say that subordination is not a more appropriate remedy than rejection, in view of the principle applied in the Hartford-Empire case, *if by it a just result may be reached.*" (187 F. 2d, p. 815.) (See court's full discussion of this point, Appendix, p. 31.)

On this Appeal, in order to exclude Columbia without rejecting its claims, the court created the fiction that American and Kentucky public creditors are creditors of Inland.

The Sixth Circuit was not confronted again with the possibility of Columbia's participation until the 1957 Appeal. Then the Allen Committee, as noted above, by petition alleging changed economic conditions, prayed for return to the 1941 holding disallowing Columbia's claims. The petition was dismissed. The reason given by Chief Judge Simons is:

> "* * *. Undoubtedly, the petitions (sic), if sustained, would mean a reopening of determinations previously, and repeatedly, made. We decline to do so. * * *" (241 F. 2d, p. 381).

On the motions to dismiss the 1958 Appeals the court directed counsel not to argue "issues already litigated or relitigated,"[7] including the issue of Columbia's status as a subordinated creditor. Columbia's equities were not considered in the opinion.

SEC has repeatedly taken the position that Columbia should not profit from its wrongs while minority stockholders are left without remedy. Specifically, it unsuccessfully argued on the 1945 Appeal that stockholders owning 1.4% of the Inland stock should participate and on the 1957 and 1958 Appeals that Columbia's claims should be subordinated to the interest of the public stockholders or reject. (See Third Advisory Report filed below May 2, 1958, Exhibit K Harbeson motion to dismiss).

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2. An important question of bankruptcy administration involving the "absolute priority" rule is pointedly presented by the holding below that the Plan is fair and equitable although by it public creditors of American and Kentucky are classified as quasi creditors of Inland whose claims against Inland's assets are prior to the claims of Inland stockholders.[8]

It is established law that no plan of reorganization is fair and equitable which does not classify creditors'

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[7]The full contents of a letter from the Clerk of the Court of Appeals to counsel, dated November 26, 1958, is:

"In response to various inquiries from counsel concerning the extent of the hearing on December 15, I am directed to advise you that the hearing will be confined to the motions to dismiss. The court does not expect that any argument will be presented on issues already litigated or relitigated."

[8]As previously noted, this question will not arise unless Columbia's claims are rejected or subordinated to innocent stockholder interests.

claims and stockholders' interests in the order of "absolute priority" as arranged by the contracts between debtor, creditor and stockholder. *Case* v. *Los Angeles Lumber Products Co., Ltd.*, 308 U. S. 106; *Consolidated Rock Products Co.* v. *DuBois*, 312 U. S. 510. While these cases emphasize the necessity that a plan fully compensate all creditors before stockholders can participate, reason and the cases recognize that a plan of reorganization must allow stockholders' interests after full compensation to creditors.

We recognize, of course, that the Plan would be fair and equitable if there were compelling equities requiring subordination of the rights of the Inland stockholders to the rights of creditors of American and Kentucky. The fact that American is the controlling stockholder of Inland and Kentucky suggests this possibility. *Cf. Taylor* v. *Standard Gas & Electric Company*, 306 U. S. 307. But no such equities exist here. Both courts below have repeatedly and affirmatively found a complete absence of domination or overreaching by American of its subsidiaries or any questionable conduct toward either of them. A charge of domination of Inland by American, made by the public Inland creditors who claimed priority over certain American claims against Inland, was rejected on the 1951 Appeal. The Sixth Circuit there wrote:

> "* * *. The court (below) found nothing in the record to justify any conclusion that Inland or its creditors were in any way injured or overreached by American Fuel, and we find none. * * *". (187 F. 2d, p. 818.) (See Appendix, p. 33 for the court's discussion of this point).

To the contrary, it is established that the entire proceeds of the sale of American's issue of $2,000,000 Gold Notes was used for the benefit of the subsidiaries.[9] Prior to bankruptcy American received no dividends from, and no repayments of loans to, Inland or any of its subsidiaries. American helped not injured Inland.

3. The course of these proceedings is believed to have so far departed from the usual and accepted principles of bankruptcy administration as to require the exercise of this court's supervisory power. Sound principles were not followed in developing the Plan or in the Plan itself, in that the court departed from the principles of the *Pepper* case (ante, p. 10), mistakenly introduced the holding of this court in *Hartford-Empire*, a patent infringement case, into bankruptcy law (ante, p. 12) and invented the questionable quasi creditor fiction which was later substantially modified (ante, p. 9). Departure from sound principles in developing the Plan is shown by the fact that the change in the value of Inland's assets during administration has repeatedly forced the courts below to retreat from or modify equitable principles previously employed to guide the reorganization. When in 1957 and 1958 the mistakenly applied principles failed to reach the "just result" from which Judge Simons was searching when the quasi creditor fiction was conceived (see italicized language ante, p. 13), the court, perhaps dismayed by the long course of these proceedings, resolutely refused to reconsider its earlier holdings but mechanically applied, the rules developed under quite different

[9]Findings of fact of District Court filed September 3, 1943.

conditions. That a just result was not reached is evident. Guilty Columbia receives the entire property and business of the debtors, although innocent public stockholders injured by Columbia's wrongdoings are ignored.

It is believed that if the court below had followed the *Pepper* case and disallowed Columbia's claims, it would not have had to create the fiction that American and Kentucky public creditors are creditors of Inland with the confusion which this fiction created later, necessitating numerous appeals and contests among creditors. If accepted principles had been folowed this case would have been soundly decided many years ago.

This court should upon review direct the courts below to follow accepted principles and (i) disallow Columbia's claims, (ii) order distribution of Inland's assets remaining after Inland's debts are paid to Inland's stockholders, including American and Kentucky, in proportion to their Inland stockholdings; and (iii) require allocation of the assets so received by American and Kentucky to their creditors and stockholders in the order of absolute priority. If this is done, a plan of reorganization will develop which will not require modification by reason of any change in the value of Inland's assets. These long drawn-out proceedings can be ended promptly with a just result, namely, the denial to Columbia of the fruits of its wrongdoing, and reparation as far as possible to the injured innocent public creditors and stockholders.

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4. The public interest and importance of this case does not lie in the number of instances in which the

questions here presented may arise; but rather in the impact which it will have, if allowed to stand, on the application of settled principles of bankruptcy administration.

CONCLUSION

For the foregoing reasons this Petition for Certiorari should be granted.

Respectfully Submitted

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March 14, 1959

In the Matter of:
INLAND GAS CORPORATION,
KENTUCKY FUEL GAS CORPORATION,
AMERICAN FUEL & POWER COMPANY,
Debtors.

APPEAL from the United States District Court for the Eastern District of Kentucky.

Decided January 15, 1959

Before SIMONS, MARTIN and MILLER, Circuit Judges.

PER CURIAM. These cases have been heard on motions of the trustee of American Fuel & Power Company [supported by the Columbia Gas Systems, Inc., the Green Committee for Independent American Fuel Note Holders, and the trustees of the debtors, Inland Gas Corporation and Kentucky Fuel Gas Corporation] to dismiss the appeals in these seven cases which were heard together, and on the opposition of the Securities and Exchange Commission and the several parties joining it in opposition to the dismissal of the appeals. This opposition, of course, involves opposition to the plan adopted in the district court and to its confirmation.

This appellate court has heard oral arguments of four attorneys in favor of the motions to dismiss and those of five attorneys opposing the dismissals. There have been considered also some twenty briefs filed by the attorneys for and against the motions.

The full history of this long-drawn-out litigation is disclosed by the numerous opinions of this court: *In re American Fuel & Power Company*, 122 F. (2d) 223 (C. A. 6); *Columbia Gas & Electric Corporation* v. *United States*, 151 F. (2d) 461 (C. A. 6); *In re American Fuel & Power Company, et al.*, 151 F. (2d) 470, affirmed by the Supreme Court, sub nom *Vanston Committee* v. *Green*, 329 U. S. 156; *Columbia Gas & Electric Corporation* v. *United States, et al.*, 153 F. (2d) 101 (C. A. 6); *In re Inland Gas Corporation, et al.*, 187 F. (2d) 813 (C. A. 6); *In re Inland Gas Corporation, et al.*, 208 F. (2d) 13 (C. A. 6); *In re Inland Gas Corporation; Harbison* v. *Williamson, et al.; Vanston* v. *William-*

son, et al.; Kern v. *Williamson, et al.; Green, et al.,* v. *Vanston, et al.,* 211 F. (2d) 381 (C. A. 6), certiorari denied, sub nom *Kern* v. *Vanston,* 348 U. S. 840; *In re Inland Gas Corporation, et al.,* 217 F. (2d) 207, (C. A. 6); *In re Inland Gas Corporation, et al.,* 241 F. (2d) 274 (C. A. 6), certiorari denied 355 U. S. 838 (1957).

Upon the last remand to the United States District Court, District Judge Ford had a full hearing with all interested parties appearing by counsel to consider whether a proposed plan, presented by the trustees of the several debtor corporations involved, is fair, equitable and feasible. Upon conclusion of the hearing, the district court entered an order finding the plan fair, equitable and feasible.

On June 2, 1958, the United States District Court entered an order confirming the plan of reorganization and overruling all objections to the plan and to its confirmation. It is obvious that the district judge attempted to the best of his ability and understanding—and we think successfully—to apply the principles stated in our last opinion [241 F. (2d) 374], and to put into full effect the mandate of this court. The evaluation which he put on the properties in issue was supported by substantial evidence and it cannot be said that his decision to follow the evaluation which he adopted upon expert testimony, rather than that of the Securities and Exchange Commission, was clearly erroneous. On the contrary, we find that the district judge exercised sound discretion in adopting the evaluation which he did, upon the basis of the expert evidence before him.

We are of opinion, further, that Judge Ford appropriately applied the adjudication of this court in 241 F. (2d) 374, with respect to post-bankruptcy interest and all other issues before him. Motions to dismiss are appropriate in the circumstances. *Long Beach Dock & Terminal Co.* v. *Pacific Dock & Terminal Co.,* 98 F. (2d) 833, 835 (C. A. 9), certiorari denied 305 U. S. 1020; *Securities and Exchange Commission* v. *Vacuum Can Co.,* 157 F. (2d) 530, 532 (C. A. 7), certiorari denied 330 U. S. 820.

The appeals are dismissed; and the judgment of the district court confirming the plan of reorganization is affirmed.

COLUMBIA GAS & ELECTRIC CORPORATION V. UNITED STATES ET AL., 6th Cir., 151 F. 2d 461 (1945)

NOTE: Only the Statement of Facts and the portion of this opinion relating to subordination of Columbia's claims are here copied. Headings below added.

(Organization of Debtors)

In the main, his (the District Judge) findings are not controverted insofar as they disclose the origin and purpose of the debtors and the story of Columbia's interest in their activities which follow. Inland Gas Corporation was incorporated in 1927, and Kentucky Fuel Gas Corporation in 1928, both for the purpose of producing, transporting and selling natural gas to industrial consumers. They were promoted by the same persons and financed by the same group of bankers, and each issued securities to the public and distributed its common stock to the promoters and underwriters as compensation for services. The promoters also, in July, 1928, organized the American Fuel & Power Company for the purpose of taking over and holding stock of Inland and Kentucky Fuel and other operating companies which might later be organized, in order to integrate and expand their operations through unified control and management. Stockholders of Inland and Kentucky Fuel exchanged their stock for stock in the holding company, and in July, 1929, American Fuel issued and sold to the public an issue of convertible gold notes, maturing July 1, 1934. The proceeds thereof were used to provide financial aid to the operating companies, and to acquire additional gas acreage and transmission lines. American Fuel also organized and financed other subsidiary companies for the purpose of having them acquire, hold and operate various properties.

(Competition by Debtors With Columbia)

During the same period Columbia, through numerous subsidiary corporations, was engaged in the production, transmission and sale of natural gas to both industrial and domestic consumers in Kentucky, West Virginia, Ohio, Indiana and other states. Such subsidiaries were connected by interstate transmission lines

and integrated, through unified management and operation, into what is known as the "Columbia System." The Columbia subsidiaries served both domestic and industrial consumers and so were public utilities subject to the rules and regulations of State Public Utility Commissions and the provisions of municipal franchises under which they operated. The result was that they could not contract with industries at fixed rates for definite periods because of the power of state and municipal authorities to change their rates and to require them to give preference to domestic consumers when gas was insufficient for both. The subsidiaries of American Fuel served only industrial users under private agreements, and all plans for expansion of the American Fuel system contemplated strict adherence to that policy. Being free from constraint by municipal franchises and state regulation, they had a substantial competitive advantage over Columbia wherever they came into competition with it.

Prior to the organization of American Fuel, Columbia was practically free from actual competition in the field occupied by its subsidiaries in Kentucky, Ohio and West Virginia, but during 1928, 1929 and a greater part of 1930, the operating subsidiaries of American Fuel, as a result of their competitive advantage, took from them some of their large industrial customers, including the American Rolling Mill Company. During 1929 and 1930, Columbia was engaged in developing a plan for the construction of a natural gas pipe line from its Kentucky and West Virginia fields to the eastern seaboard cities of Washington, Baltimore and Philadelphia. As originally planned, the project called for a large increase of gas reserves in West Virginia and eastern Kentucky, and to acquire such reserve Columbia embarked upon a large scale program for increasing its acreage. The gas acreage held by American Fuel was considered by it to be desirable. Inland and Kentucky Fuel had sustained substantial operating losses in 1928 and 1929, due to their heavy burden of securities and burdensome gas contracts, and so were never able to earn their fixed charges. Columbia knew of this precarious financial condition and that the indentures securing the bonds of Inland and Kentucky Fuel provided that upon their failure to meet interest of sinking fund requirements the indenture trustees could institute foreclosure proceedings upon the request of holders of 25% of their bonds. Anticipating such eventuality, and

to place itself in a position to force foreclosure and sale of the properties with an opportunity to purchase them at foreclosure, Columbia, in January, 1930, began to purchase Inland and Kentucky Fuel bonds on the open market by methods which concealed the fact that it was the purchaser, and by the end of April, 1930, had acquired in excess of 25% in principal amount of the bonds of both.

(Debtors' Plans for Expansion)

From the beginning of their operations, Inland and Kentucky Fuel were under the supervision and management of Hope Engineering Company, an organization with wide experience in successfully promoting and building gas transmission lines. It recognized the dubious financial condition of American Fuel and its subsidiaries, and realized that its only hope of survival was to secure capital not only to bridge its immediate difficulties, but to finance a large expansion of its business. The industrial area in and around Detroit, Michigan, not then supplied with natural gas, was conceived to be an inviting field, and Hope recommended that American Fuel make an effort to enter it. Plans for that purpose were formulated, and Hope succeeded in inducing American Utilities & General Corporation and Moody-Seagraves Company to join in the promotion. These companies united their resources and combined their efforts as a syndicate to construct a natural gas transmission line from Eastern Kentucky to Detroit which would pass through the heart of the territory then occupied and served by the subsidiaries of Columbia. American Utilities and General Corporation was a prosperous and successful investment trust, backed and controlled by G. E. Barrett & Company, a strong banking corporation which had financed many gas enterprises. Moody-Seagraves Company had successfully built and operated natural gas projects and had wide experience in their promotion. The Syndicate was considered to be a combination of sufficient financial strength and business experience to foreshadow success of the Detroit project and so prevent the impending financial collapse of the American Fuel System.

The Syndicate acquired voting trust certificates, notes, and a majority of the common stock of American Fuel, which gave it

complete control of that System. To prevent default in maturing obligations of American Fuel, Inland and Kentucky Fuel, Hope agreed to provide funds sufficient to meet their immediate sinking fund requirements. Operations of the Syndicate were carried on by and through corporations which it wholly owned and controlled. Through one it applied for a franchise to lay gas pipe lines in the streets of Detroit and entered upon a vigorous campaign to secure contracts from industrial consumers there as well as in the territory through which the proposed line would be constructed; through another its surveyed and acquired the right-of-way for the transmission line from the gas fields of Eastern Kentucky, including necessary permits for river crossings; and through still another it started acquiring additional gas acreage in Eastern Kentucky. The plan was for the Syndicate to provide sufficient money to advance the project to a point where its successful completion and profitable operation could be demonstrated, and then to sell bonds to the public in amount sufficient to finance completion. Contracts were obtained from industrial consumers in the Detroit area and elsewhere, and Ralph K. Davis, a nationally known and reputable gas engineer, was employed to investigate and analyze the proposed enterprise. After an exhaustive survey he reported the gas reserve to be sufficient, the industrial market adequate, and the project, as a whole, a sound business proposition which would be profitable to the gas company and of economic advantage to the industries of Toledo and Detroit.

(Elimination of Competition by Others Than Debtors)

During this time Columbia was also making plans to supply natural gas to the Detroit area. It made a survey of the market in Detroit, and while the application of the Syndicate for a franchise was pending, Columbia's executive committee passed a resolution providing for an extension of its existing gas transmission lines from Toledo to Detroit. The success of these plans was threatened not only by the plans of the Syndicate for the development of the American Fuel System, but also by the starting of a large pipe line for the transmission of natural gas from the Texas Panhandle and the Hugoton gas fields of Kansas, which was proposed to be extended into Ohio, Michigan and Indiana and make gas available to cities then supplied by Columbia, and also to Detroit

toward which Columbia was planning. In addition, the United Carbon Company, with acreage in Eastern Kentucky, had announced an intention to build a natural gas pipe line to Cincinnati for the purpose of supplying gas to that city in competition with Columbia, and proposed to furnish natural gas to a number of Columbia customers in the Cincinnati area at a substantially reduced rate. United Carbon Company's threat was averted through the purchase of all of its gas by Warfield Natural Gas Company, a Columbia subsidiary. Competition from the Texas and Hugoton fields was avoided through purchase of complete control of that project by Columbia Oil and Gasoline Corporation, another Columbia subsidiary, entailing an investment of more than $30,000,000. Meanwhile, Columbia continued to acquire bonds and debentures of the American Fuel System until it had acquired approximately 42% of Kentucky Fuel obligations and approximately 36% of the obligations of Inland, representing an aggregate expenditure of between three and four million dollars.

(Columbia's Purchase of Stock Contract of Debtors)

On October 30, 1930, Columbia purchased the Syndicate's entire holdings in the American Fuel System, and all other corporations which had been organized by the Syndicate for the promotion and development of the Detroit project. This purchase included 76% of the outstanding common stock of American Fuel, together with all claims and securities held by the members of the Syndicate in American Fuel and its subsidiaries. The price paid by Columbia returned to the Syndicate members all that they had invested, and gave them a clear profit of $350,000. In addition, Columbia guaranteed to employ Hope to perform natural gas engineering work on at least $20,000,000 of construction projects within a period of three years, for which it agreed to pay Hope a compensation of 4%,—an obligation which it later discharged by paying Hope $400,000 without any work being done by Hope. The Syndicate delivered resignations of all officers and directors of American Fuel, its subsidiaries and other associated corporations, and they were replaced by persons designated by Columbia. Nominees of Columbia were made voting trustees of a majority of the capital stock of Kentucky Fuel. Columbia

agreed to hold the members of the Syndicate harmless by reason of the obligation of Hope to provide funds to meet sinking fund requirements of Inland and Kentucky Fuel, and in respect to any obligation imposed by gas contracts entered into with industrial consumers, and from certain obligations under leases of gas acreage.

(Receivership Forced by Columbia)

By the use of certain of its claims Columbia promptly initiated receivership proceedings against Inland and Kentucky Fuel, and its nominee, Lockhart, was appointed receiver. There were no further efforts to advance the Detroit project. The negotiations pursuant to which Columbia had acquired from the Syndicate control of the American Fuel System, were inaugurated by C. R. Seagraves, President of the Moody-Seagraves Company, as his confidence in the ability of the Syndicate to successfully complete the Detroit project had been considerably shaken by reason of the financial depression and the depleted financial strength of the members of the Syndicate.

(Finding on Columbia's Intent)

There is substantial credible evidence that from the very beginnings of the promotions that led first to the incorporation of Inland, then to the organization of the American Fuel System, and later to the organization of the Syndicate which proposed to construct the Detroit pipe line, Columbia was fully conscious of the threat to its subsidiaries that these organizations would present with the competitive advantage afforded by their immunity from state and municipal regulation. It manifested early and continued hostility to the venture, and exerted every possible influence to thwart its successful fruition. It early lodged a complaint with the Better Business Bureau of New York in respect to the financing of Inland; it manifested great concern over the taking from its subsidiaries important industrial customers in their territory; it kept itself completely informed as to the financial and operating activities of American Fuel and its subsidiaries and the provisions of their contracts for gas. Though

fully informed of the unsoundness of their financial structure and their improvident gas contracts, it began in January of 1930 secretly to purchase bonds and securities of Inland and Kentucky Fuel at but little discount from their par values. Its president declared that 'if anyone thinks Columbia will allow a ditch to be dug across the State of Ohio, he is just crazy,' and that if Columbia came into the picture it would have to 'put the company [American Fuel] through the wringer.' Finally, though now proclaiming that American Fuel and its subsidiaries were unsoundly financed, that neither it nor its subsidiaries could meet their fixed charges and sinking fund requirements and were headed for receivership, it paid approximately $3,000,000 for stock control and assumed heavy obligations subsequently liquidated by substantial payments. It is true that much of this evidence was controverted, but we are not able to say that the district judge, who had advantages superior to ours for determining the truth, was clearly wrong in the determinations, expressed and implicit in his findings, especially when viewed against a background of evidence pointing clearly to restraint of competition from sources other than Kentucky gas fields.

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(Columbia's Arguments Considered and Rejected)

The argument that the court, for alleged violations of the Anti-Trust Laws, imposed in a bankruptcy proceedings penalties other than those specified in the Anti-Trust Statutes, must be rejected. The court imposed no penalties; it but exercised its equity power to deny relief to a creditor seeking enforcement of contracts entered into illegally or tainted with inequity. To apply the doctrine so vigorously urged by Columbia, is to deny the power and duty of equity, to reject demands arising out of illegal or inequitable conduct whenever such conduct is subject to legal penalties imposed by state or federal law, and so to limit it to that narrowly restricted field in which the chancellor may sense inequity even in the absence of statutory condemnation. A denial of this contention does not mean, of course, that the power may be invoked in respect to conduct constituting no wrong to the parties or interests in litigation.

(Hartford-Empire Case Considered)

In our view, Columbia receives no support from the case of Hartford-Empire Co. v. United States, 323 U. S. 386, 65 S. Ct. 373, wherein it was held that the use of patent positions to allocate fields of manufacture and to maintain prices, violated the Anti-Trust Laws and could be restrained, but that the court was without power to compel action, which amounts to a forfeiture of patents. Columbia correctly points out that there is no distinction between a patent and a bond; both are a species of property and neither can be confiscated because of past uses. But its contention in other respects ignores the fundamental basis of the Hartford-Empire decision which, in line with Morton Salt v. Suppiger and B. B. Chemical Co. v. Ellis, supra, denies enforcement of patent rights against infringers, so long as the patent owner is using his patent in violation of the Anti-Trust Laws. It may well be, under the facts of the Hartford-Empire case, that there remained to the appellants there, property rights which, when their owners had abandoned their illegal use and been purged of inequity could still be enforced against subsequent infringers. Such rights the court would not allow to be confiscated. This doctrine has no application to the present status of Columbia, at least in respect to the subordination of its claims by the decree. In that respect the decree merely denies enforcement of the Columbia claims precisely as the Hartford-Empire decision denies enforcement of patents illegally used against those infringing during such illegal use. The fruits of Columbia's inequitable activities are still retained in its freedom from competition by American Fuel, and Columbia's suggested remedy would still leave wronged stockholders and creditors without relief, for a restoration of the status quo ante is manifestly now impossible. It may be as suggested by the S. E. C. that, under the facts of the case, the distinction between subordination and rejection is purely academic, but submissiveness in principle to the doctrine of the Hartford-Empire case, perhaps requires an amendment to the decree, limiting the remedy of the petitioners to the subordination of the Columbia claims.

STATUTES

Sec. 2 of the Bankruptcy Act, 66 Stat. 420, 11 U. S. C. Chap. 2, Sec. 11 (2).

§ 2. *Creation of Courts of Bankruptcy and Their Jurisdiction.* a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

* * *

"(2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; * * *"

Sec. 57k of the Bankruptcy Act, 52, Stat. 866, 11 U. S. C. Chap. 6, Sec. 93 (k):

"k. Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part according to the equities of the case, before but not after the estate has been closed."

Sec. 221 (2) of the Bankruptcy Act, 52 Stat. 897, 11 U.S.C. § 621 (2):

"Sec. 221. The judge shall confirm a plan if satisfied that—

* * *

(2) the plan is fair and equitable, and feasible;"

Inland Gas Corp. et al., 187 F. 2d 813 (1951):

* * *

The Columbia Claims

When the controversy first claimed our attention in 1941 it was upon an appeal by creditors of the American Fuel & Power Company, seeking to set aside an order approving a settlement between the trustees of the debtors and the Columbia System. In an exhaustive opinion we held that Columbia had acquired its securities and stock in pursuance of an illegal and inequitable scheme to destroy competition with it by the American Fuel & Power Company and its affiliates, that under the facts of record no principle of equity, morals or law required the court to lend its aid to further a scheme abhorrent to all recognized rules of right and justice. The orders of the court were reversed and the causes remanded with direction that all claims or stock interests of Columbia against the debtors be rejected.

Columbia, not having been a party to the proceedings in that case and so not bound by it, the district court conducted extended hearings upon the Columbia claims, and applying the law as we found it to be, entered orders upon detailed findings of fact and conclusions of law rejecting them all. Again there were appeals mainly by Columbia, challenging the judgment. After careful consideration of the findings and conclusions of the court, and an extended six volume record, we accepted the findings of the district judge but limited the remedy to the subordination of Columbia 'claims to the 'claims of all other creditors in every class.' Petitions for amendment and clarification of our mandate were later denied. 6 Cir., 153 F. 2d 101.

(Discussion of Hartford-Empire Case)

When our decision was rendered on November 26, 1945 in Columbia Gas & Electric Corp. v. United States, supra, the Supreme Court had but recently decided the case of Hartford-Empire Co. v. United States (Jan. 18, 1945), 323 U. S. 386, 65 S. Ct. 373, 89 L. Ed. 322, wherein the court denied relief for infringement of patents illegally used against those infringing during such illegal use, but declined to hold the patents invalid. We thought that under the facts of that case there might well remain to the appellants property rights which, when their

owners had abandoned their illegal practices and been purged of inequity, could still be enforced against subsequent infringers, and that it was for that reason the court would not permit them to be forfeited. We perceived an analogy between the patent rights there preserved and the claims of Columbia here involved, and so while we approved the findings of the district court that the conduct of Columbia in acquiring its securities was inequitable and illegal, we concluded that subordination of its claims to those of other creditors was a more appropriate remedy than their complete rejection. We were probably led to this also by the view of the SEC that upon the facts of the case then developed, the distinction between subordination and rejection was purely academic. Mature consideration leads to the conclusion that the analogy between Columbia securities here and the patents involved in the Hartford-Empire case, supra, is not as close as it then appeared to us to be. The Supreme Court found no evidence that the patents there involved had been illegally or fraudulently obtained. It was their inequitable use that led to the adjudication and there still remained the possibility that when such inequitable use was discontinued and their owners purged of inequity a legitimate property right against subsequent infringers might thereafter be maintained. Here the securities of Columbia were tainted with inequity from the very beginning, and no reasonable expectation may be indulged that in the present status of the debtors there may come a time when Columbia may assert any right in such securities as against creditors who have not been injured by its illegal and inequitable conduct. This is not to say that subordination is not a more appropriate remedy than rejection, in view of the principle applied in the Hartford-Empire case, if by it a just result may be reached. Nor are we precluded by our previous mandate, even if susceptible to the interpretation put upon it by the district court, from considering whether the plan of reorganization, now for the first time presented, is, in the light of all circumstances brought forth, fair and equitable, since the allowance of claims in bankruptcy remains interlocutory until the estate has been closed, New York N. H. & H. R. Co. v. Reconstruction Finance Corp., 2 Cir., 180 F. 2d 241, 243, and no application of the principle of 'the law of the case' need deter us from so doing, in an exceptional case, which this is, Reynolds Springs Co. v. L. A. Young Industries, 6 Cir., 101 F.2d 257, 259

however such principle may circumscribe the action of a district court. (pp. 815, 816)

* * *

(American and Kentucky Public Creditors Are Quasi Creditors of Inland)

We are not advised by this record of the circumstances under which or the representations by which the gold notes of American Fuel supported by the pledge of Inland stock, were sold, and the trust indenture under the terms of which they were issued is not here. The inference is inescapable, however, that the main reliance of the public investors in such securities must have been the Inland stock, based upon Inland assets and pledged for their benefit by American and Kentucky. We are aware that some of the appellants contend that at that time Inland stock had little or no value. The fact remains, however, that the investors must have relied, to large extent, upon the assets of Inland. If not, why was Inland stock pledged? The purpose of the issue was to rehabilitate Inland, to save it from debt default and to increase its holdings of gas acreage, and the inference is likewise inescapable that this must have been understood by the investors. Moreover, it now appears that through excellent management by its trustee Inland assets are sufficient to pay all of its debts exclusive of the claim of Columbia, so that the expectation of its rehabilitation was not wholly vain. Besides, the entire reorganization structure now planned rests upon the assets of Inland. So viewing it, we think that the public security holders whose investments were guaranteed and supported by a pledge of Inland stock are, in a very true sense, creditors or quasi-creditors of Inland, and that whatever the formal arrangement may have been a realistic view is that they are entitled to creditor status in the plan of reorganization. Certainly a court of equity, particularly in a bankruptcy reorganization, has the power and likewise the duty to look through form to substance. Since this creditor status may practically be recognized only through the medium of Inland stock owned by American and Kentucky without raising problems of distribution and priorities, the court is directed to amend the plan of reorganization to subordinate Columbia claims to the stock of Inland and assign the residue of

Inland assets over its debts, exclusive of Columbia's claims, to the account of their public creditors according to the respective stock interests of 72.6% for American and 26% for Kentucky. Whether this means that we have subordinated securities to stock or have subordinated them to debts, measured by the respective pledges of stock, seems to us immaterial for the result will be the same. Having perceived a creditor status for the holders of securities supported by Inland stock, we are unable to make any provision for the minor interest of 1.4% of the common stock of Inland directly held by public investors, as recommended by the SEC. The holders of such stock were in no sense creditors. (p. 817)

(American Has Not Overreached Inland)

It is urged by various Inland creditors that the general claims of American Fuel should be disallowed as debts and construed as contributions to capital. On behalf of Kentucky the Vanston Committee takes the position that its claims should be given priority over those of American Fuel. We find no error in the court's rejection of these contentions. It must be remembered that American Fuel did not organize Inland but was created by it, and that the funds advanced to Inland were to save it from default and to increase its chances for survival. The court found nothing in the record to justify any conclusion that Inland or its creditors were in any way injured or over reached by American Fuel, and we find none. We perceive no unfairness in permitting American Fuel to participate on a parity with other creditors. The district court's findings in that respect are affirmed.